

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
999 18<sup>TH</sup> STREET- SUITE 300  
DENVER, CO 80202-2466  
Phone 800-227-8917  
<http://www.epa.gov/region08>

DOCKET NO.: CAA-08-2004-0010

IN THE MATTER OF:	)	
	)	
ALAN E. SMITH, PRESIDENT	)	FINAL ORDER
Debal Associates, Inc.	)	
d/b/a Tires Plus	)	
Watertown, SD 57201	)	
	)	
RESPONDENT	)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

December 8, 2004  
DATE

SIGNED  
Alfred C. Smith  
Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

<b>IN THE MATTER OF:</b>	)	<b>CONSENT AGREEMENT AND FINAL</b>
	)	<b>ORDER</b>
<b>Alan E. Smith, President</b>	)	
<b>Debal Associates, Inc.</b>	)	
<b>dba Tires Plus</b>	)	
<b>Watertown, SD 57201</b>	)	Docket No. CAA-08-2004-0010
	)	
	)	
<b>Respondent.</b>	)	
<b>—</b>	)	

**I. STATUTORY AUTHORITY**

1. This Consent Agreement and Final Order ("CAFO") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, as amended on November 15, 1990, for violations of the "Stratospheric Ozone Protection" requirements of Section 608 of the CAA, 42 U.S.C. § 7671g, and the "Protection of Stratospheric Ozone" regulations found at 40 C.F.R. Part 82.

2. This CAFO is issued pursuant to 40 C.F.R. §§ 22.18(b) and 22.31.

**II. FINDINGS**

3. Respondent is Alan E. Smith, President, Debal Associates, Inc. doing business as Tires Plus, Watertown, South Dakota.

4. At all times relevant to this action, Respondent's business involved repairing and/or servicing air conditioners. Respondent received payment for the repairs and services it performed.

5. At all times relevant to this action, Respondent was a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

6. Respondent consents to the jurisdiction of the Agency in this proceeding.

7. As alleged in Count 1 of the Complaint, Respondent violated 40 C.F.R. § 82.34(a) by servicing motor vehicles for consideration without properly using refrigerant recycling equipment approved pursuant to 40 C.F.R. § 82.36.

8. As alleged in Count 2 of the Complaint, Respondent violated 40 C.F.R. § 82.42(a) by failing to certify to the Administrator that it had acquired and was properly using approved refrigerant recycling equipment.

9. In August 2004 Respondent certified to the Administrator that it had acquired approved refrigerant recycling equipment for service of air conditioners.

10. Each party in this action agrees to bear its own costs and attorney fees.

### **III. ORDER**

11. Based upon the foregoing FINDINGS, and pursuant to the authority vested in the Administrator of the EPA by section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

12. Respondent shall comply immediately with all the requirements of section 608 of the Act, 42 U.S.C. §§ 7671g, and 40 C.F.R. Part 82.

#### **IV. PENALTY**

13. Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), Respondent has agreed to pay \$10,785, in two installments, in full satisfaction of the alleged violations. Payment of the penalty shall: (1) be made by certified or cashier's check payable to "Treasurer, United States of America;" (2) identify the case title and docket number of this action (either on the check or in a transmittal letter accompanying the check); and (3) be remitted to:

U.S. Environmental Protection Agency, Region 8  
Regional Hearing Clerk  
P.O. Box 360859M  
Pittsburgh, Pennsylvania 15251

A copy of the checks shall be sent to:

Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

and to:

David Rochlin, Enforcement Attorney (8ENF-L)  
U.S. EPA, Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

14. Payment of the penalty in accordance with the procedures set forth in Section IV of this CAFO shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing in this matter.

15. Respondent shall pay the first half of the penalty within thirty days after it receives the signed, final copy of this CAFO. The second half is due within 210 days after receipt of the signed, final copy of the CAFO.

16. Respondent agrees not to claim a federal income tax deduction for all or any part of the penalty it is paying to the United States.

17. Neither the assessment nor the payment of an administrative penalty pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), shall affect Respondent's continuing obligation to comply with the CAA or any other federal, state, or local laws or regulations and any compliance order issued under the CAA.

#### **V. EFFECTIVE DATE**

18. This CAFO shall become effective upon issuance by the Regional Judicial Officer.

Date: **11/24/04**

**SIGNED**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice  
U.S. EPA, Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

Date: **12-2-04**

**SIGNED**

Alan E. Smith, President  
Debal Associates, Inc. dba Tires  
Plus  
615 9<sup>th</sup> Street SE  
Watertown, South Dakota 57201

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **ALAN E. SMITH, PRESIDENT, DEBAL ASSOCIATES, INC. d/b/a TIRES PLUS, DOCKET NO.: CAA-08-2004-0010** was filed with the Regional Hearing Clerk on December 8, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to David Rochlin, Enforcement Attorney, U. S. EPA – Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on December 8, 2004, to:

J. Douglas Austin  
Austin, Hinderaker, Hopper, Strait & Bratland, LLP  
25 First Avenue, SW  
P. O. Box 966  
Watertown, SD 57201-0966

Pouch mailed and telefaxed to:

Honorable Spencer Nissen  
Administrative Law Judge  
U. S. Environmental Protection Agency  
Ariel Rios Building (1900L)  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

December 8, 2004

**SIGNED** \_\_\_\_\_

Tina Artemis  
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON  
December 8, 2004.**

